

EX PARTE OR LATE FILED

ORIGINAL

M I L L E R & V A N E A T O N
— P. L. L. C. —

MATTHEW C. AMES
FREDERICK E. ELLROD III
MARCI L. FRISCHKORN*
MITSUKO R. HERRERA†

*Admitted to Practice in
Virginia Only

†Admitted to Practice in
California Only

Incorporating the Practice of
Miller & Holbrooke

1155 CONNECTICUT AVENUE, N.W.
SUITE 1000
WASHINGTON, D.C. 20036-4306
TELEPHONE (202) 785-0600
FAX (202) 785-1234

MILLER & VAN EATON, L.L.P.
44 MONTGOMERY STREET
SUITE 3085
SAN FRANCISCO, CALIFORNIA 94104-4804
TELEPHONE (415) 477-3650
FAX (415) 398-2208

WWW.MILLERVANEATON.COM

WILLIAM L. LOWERY
WILLIAM R. MALONE
NICHOLAS P. MILLER
JOSEPH VAN EATON

OF COUNSEL:
JAMES R. HOBSON
JOHN F. NOBLE

RECEIVED

JUL 26 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 25, 2000

Via Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Presentation in WT Docket No. 99-217 and CC Docket No. 96-98

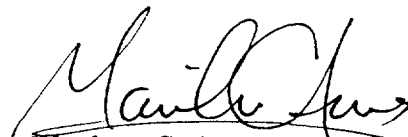
Dear Ms. Salas:

On July 20, 2000, I filed a notice of oral ex parte presentations conducted on July 19, 2000 by Professor Lawrence Tribe and representatives of the Real Access Alliance in connection with the above-captioned matters. The executive summary of *Critical Connections* referred to in the notice was inadvertently omitted. A copy is therefore enclosed.

Very truly yours,

Miller & Van Eaton, P.L.L.C.

By


Matthew C. Ames

MILLER & VAN EATON, P.L.L.C.

- 2 -

cc:

Hon. William Kennard
Hon. Harold Furchtgott-Roth
Hon. Susan Ness
Hon. Michael Powell
Nathan Alexander
Kathryn Arnold
Chris Babbitt
Kyle Dixon
David Horowitz
Joel Kaufmann
Adam Krinsky
Daniel Mah
Jonathan Nuechterlein
Clint Odom

Mark Schneider
Kevin Scott
McLean Sieverling
Jeff Steinberg
Thomas Sugrue
Patrick Sullivan
Joel Taubenblatt
Peter Tenhula
Lauren Van Wazer
Helgi Walker
Sarah Whitesell
Sonia Williams
Chris Wright

7379\70\MCA00591.DOC

Executive Summary

Introduction

The Telecommunications Act of 1996 created a new and dynamic nexus between telecommunications, technology, tenant attraction and retention. It also created a new series of business connections that have grown to be critical: property management professionals, tenants, TSPs and building owners. Each of these parties has come together with the goal of brokering critical connections to the information age. While each party recognizes the primary goals of their connection – enhanced tenant satisfaction, market share for the TSP and the generation of value for ownership – they have not always agreed on how to reach all three goals simultaneously.

In an effort to provide a solution to this challenge, BOMA in partnership with Riser Management Systems, OnSite Access, MetroMedia Fiber and SBC have published *Critical Connections: The Property Management Professional's Guide to Partnering in the Information Age*. The book seeks to answer the following questions:

- What telecom services do my customers want?
- How can I add value to a TSP's bottom line so that they will assist me with mine?
- How do I demonstrate to owners that I understand valuation equations and can maximize their long-term return on investment?

Part One

Before you can make a critical connection you must first accept the realities of the marketplace and know the rules by which the market is governed. Part One of *Critical Connections* will seek to demonstrate what a property management professional must do to be able to answer the question: "Am I ready to do business in this new marketplace?" The following questions will assist you in determining whether you are ready:

- Have you inventoried your building's telecom assets?
- Have you surveyed your tenants to ascertain their current and future space demands?
- Do you know who has space commitments on your building's roof risers?
- Have you determined market prices and/or trends for your telecom assets?

If you can't answer all of these questions in the affirmative, you are not alone. *Critical Connections* will give you all you need to do business.

"The Telecommunications Act of 1996 created a new and dynamic nexus between telecommunications, technology, tenant attraction and retention."



Executive Summary



Part Two

In Part Two of *Critical Connections*, BOMA and its research partners seek to establish what telecommunications services tenants are demanding and property owners are offering. Further, the start of the new millenium, with four years having elapsed since passage of the landmark Telecommunications Reform Act of 1996, demanded the creation of a valid baseline against which progress in deploying new telecommunications services might be measured in the years to come.

The nexus of tenant attraction and retention, telecommunications and technology has assumed a high level of importance to property professionals in general, and the BOMA membership in particular. This may be best reflected in the level of participation in this research project. From the 10,000 copies of the Owner/Manager survey distributed between November 1, 1999 and January 7, 2000, BOMA received 1,097 surveys back – about an eleven (11%) percent return rate. From the 10,000 copies of the Tenant Survey, BOMA received back 642, almost a six and one half (6.5%) percent return.

The owner sample represents just less than 400 million square feet of office space drawn from records representing 2,097 buildings. The average building size was 190,545 square feet. Finally, from a search of all available literature, this is the largest telecom related study of office tenants conducted to date.

Lessons (to be) Learned

Tenant Needs

- Tenants' demands may be reduced to four simple messages. Tenants want:
 - Choice among telecommunications service providers (TSPs).
 - Enhanced Internet access speed as the tenant community marches toward true broadband connectivity.
 - Choices in enhanced telecommunications services and providers at little or no additional rent.
 - Flexibility in property management responses and in the adaptability of their leased space.
- Office size and a tenant's business are two leading indicators of required access speed. Very few tenants viewed choice among telecommunications service providers when they chose their current office space, but are increasingly employing their presence as a determining factor on renewal.
- Brand loyalty for a TSP is low, and will only rarely be a determining factor in lease location or renewal decision-making process.

Executive Summary

- Tenants view the building owner as facilitating access to telecommunications services, but have not viewed an owner as a provider of such services. This is either terrific news for building offered telecommunications programs, as there is a large unmet market need, or reflects a huge challenge in marketing for such services if they are to be viewed as a valuable service by tenants.
- Technology is assisting a growing number of tenants to employ alternative officing strategies. Still, seventy-two (72%) percent of the tenants indicated no impact on their overall need for office space. In fact fifteen (15%) percent of the respondents indicated that telecommunications services resulted in an increase in their need for space.

Tenant—Owner Relations

- Owners' actions appear to be in step with tenant demands. The leading services offered are the same as the leading services demanded. Some confusion appears, however, on what services owners plan to offer next and what tenants actually say they need.
- Competitive local phone service and Internet access are the leading applications both in terms of tenant demand and buildings' offerings.
- Owners are not looking to tenants to pay additional rents for the presence of additional telecommunications services. Ninety-five (95%) percent have indicated that they have not increased rent for additional services. Of the five (5%) percent of owners that did raise rates based on telecomm service providers being available, the most common increase was in the minimal category.
- The message to building owners and managers is clear, if you are going after large office tenants, your building must have high speed internet capabilities.
- Tenant demand is a strong determinant as to which TSP gains access to a building. Ninety-eight (98%) percent of the tenants responding to our survey indicated that building management procured services from a particular TSP when they asked.
- Over eighty (80%) percent of buildings have more than a single TSP providing service with almost sixty (60%) percent of the buildings offering access to three or more providers. Some buildings offer as many as fifteen (15) TSPs.

Value Equation

- Owners believe there to be a strong connection between advanced telecom features, improved tenant retention, and marketability of their buildings. Tenants' responses appear to validate this belief, but like competition, telecommunications choice as a leasing and renewal decision-making variable is a relatively new phenomenon.



Executive Summary

- Tenants want choice but are not ready to pay for it. A building owner looking to recapture value in the near term must rely most heavily on payment from the TSP.

Owner—TSP Relations

- The nexus of real estate and competitive telecommunications offerings is embryonic. Fifty-eight (58%) percent of buildings' competitive services are less than two (2) years old and three (3) out of every four (4) competitive offerings are less than four (4) years old.
- Building owners are not universally recapturing the value of their telecommunications property through rent, but it is a growing practice.
- Flat rents have been the traditional method for setting access fees (80.9%), but revenue/success sharing is gaining rapidly in the marketplace as the traditional means for recapturing value.
- Owners agree with TSPs in that their presence in a building adds value. Neither party, however, seems to have developed a methodology for ascertaining that value, resulting in confusion in the market.
- Owners—TSP relations are long term. The average of the initial term for an access agreement is slightly longer than five(5) years. This compares favorably with the six-month cancellation notice most owners have with their professional property management partners.

Owner—TSP Negotiations

- It takes longer to negotiate license agreements between a building owner and a TSP than it does with either building tenants or traditional non-telecommunications service providers.
- Owners' concerns in moving forward with TSPs may be identified in three major components: buildings' physical limitations, security/access, and the negotiation process.
- To gain access, a successful TSP must demonstrate: Quality/Reliability of Service, a history of customer service and a request from an existing tenant. The willingness of a TSP to compensate the building owner came in fourth in the list of decision points.
- TSPs would do well to invest in building owner education on access issues. The leading sticking points in Owner—TSP relations are access negotiations, sales techniques, owners' lack of knowledge regarding services, technology and market value of building telecom space.

Executive Summary

Tenant-TSP Relations

- Tenants most frequently use an RFP/Competitive Bid Process to procure service from TSPs.
- In choosing an ISP, reliability is almost twice as important to a tenant than price.
- Reliability and price were in a statistical tie when ranked in importance of choosing a TSP.
- Company name or brand recognition came in very near the bottom in decision-making drivers.
- Tenants are taking a long-term view toward technology and how it best meets their needs. Paid advertising has a large role to play in that decision-making process, but most tenants rely upon their internal MIS department for new service information.

Part Three

In the last section of *Critical Connections*, our research partners provide the reader with case studies on how they have assisted property management professionals in addressing their critical connections. While the rules and regulations outlined in Part One and the knowledge to be gained from the survey analysis in Part Two are significant, property management professionals often ask BOMA International for examples of solutions. Part Three begins the process of meeting that challenge.

